IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10451 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHKUMAR BABULAL SOLANKI

Versus

STATE OF GUJARAT & 1

Appearance:

MR RM PARMAR for Petitioner

MR R.C. KODEKAR, ASSTT.GOVERNMENT PLEADER for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/01/2001

ORAL JUDGEMENT

Babulal Chhaganlal Solanki, father of the petitioner served for about 30 years and expired on 9.9.1981 while in service. He was serving as Head

Constable Grade II. The petitioner's father left behind the petitioner, his widow and three younger brothers of the petitioner and four minor sisters. The petitioner was born on 1.12.1965 and he was minor on the date of death of his father. On 27th June, 1989, the petitioner moved an application Annexure "A", to the respondent for giving him appointment on compassionate ground in place of his father. Necessary enquiry was made on the application, but on 11.7.1991, his application was rejected on the ground that the petitioner did not apply within the period of limitation, vide order dated 27.6.1989. It is this order contained in Annexure "B" dated 27.6.1989 which is under challenge in this writ petition. Even after rejection of his application, the petitioner approached on various occasions the respondents, inter-alia requesting them to reconsider the request of the petitioner for appointment on compassionate grounds, but no positive response was given. The order Annexure "B" is challenged firstly on the ground that it suffers from the vice of non-application of mind and secondly, the application should not have been rejected on technical ground, but should have been considered on merits and thirdly that the petitioner belongs to lower strata of the society and the entire family of the petitioner is on hand to mouth. According to the petitioner, simply because the application was not moved within reasonable time, it could not be rejected without going into the merits of the case.

2. In the counter affidavit filed on behalf of the respondents Nos. 1 and 2, it has been stated that the petitioner's father expired while in service on 9.9.1981. As per the scheme of the Government, the petitioner applied for post of Police Constable on compassionate ground. At that time he was minor when his father expired. According to the Government guidelines, the dependent of Government servant can apply for compassionate appointment within five years from the date of death of Government servant. Since the petitioner's father expired on 9.9.1981, under the aforesaid guidelines the petitioner should have applied for appointment on compassionate grounds on or before 9.9.1986. Petitioner however, became major on 1.12.1983 i.e. within the prescribed time limit of five years. Even then he did not make any application for appointment on compassionate ground. On the other hand, he applied on 27.6.1989 after the prescribed period was over. The proposal for compassionate appointment of the petitioner was sent to the Government in the Home Department on 3.5.1991, but the Government had rejected the request of

the petitioner, as the same was not made as per guidelines of the Government circular.

Thus, there is not much dispute on the factual aspect of the case. The only point for consideration is whether the application of the petitioner for appointment on compassionate ground moved after five years of death of his father could be rejected solely on this ground or this should have been considered on merits. Mr. R.M.Parmar, learned Counsel for the petitioner has argued vehemently that the authority should have considered the application of the petitioner on merits and not on mere technical ground. He has tried to support his contention by pronouncement of the apex Court in Balbir Kaur and another Vs. Steel Authority of India Ltd., reported in (2000) 6 SCC 493. Having gone through this verdict of the apex Court, I am unable to find any observation of the apex Court in this case that an application which was moved after the prescribed period under Government circulars should not have been rejected on technical ground, but should have been considered on merits. On the factual side, in paragraph 3 of the judgement of the apex Court it is mentioned that the employee Hari Singh expired on 22.11.1992 and a request for compassionate employment was made on 22.1.1993. Thus, it was not a case where request for compassionate employment was made after five years or after expiry of statutory period prescribed by the Government. What apex Court laid down in this case is that denial of compassionate appointment in deserving cases amounts to denial of social and economic justice as enshrined in the Constitution. The apex Court in this case has also considered the tripartite agreement and has held that family benefit scheme assuring monthly payment to family of deceased employee was not a substitute for compassionate appointment. Considering all the factual aspects of the case the apex Court ultimately directed the Steel Authority of India to consider the case of compassionate appointment of the appellant. Thus, this case hardly applies to the facts of the present case.

The impugned order is contained in Annexure "B". After perusing the aforesaid order it appears clear that that the claim of the petitioner was rejected solely on the ground that it was not preferred within five years of the death of the petitioner's father. As indicated earlier, the petitioner's father expired on 9.9.1981. This is not in dispute. Petitioner was born on 1.12.1965 and obviously he was minor on 9.9.1981. As such due to this infirmity, he could not have asked for compassionate appointment during the period of his minority. He could

have moved application for compassionate appointment only after attaining majority. He attained majority on 1.12.1989. This was a period well within five years from the date of death of his father. Still he did not move application for compassionate appointment. On the other hand he moved the application for compassionate appointment on 27.6.1989 and by that time five years period prescribed under the Government Circular had already expired. Consequently, the authority was justified in rejecting the claim of the petitioner. The impugned order at Annexure "B" therefore does not suffer from any illegality. In the result, I do not find any merit in this petition, which is hereby dismissed. Rule is discharged with no order as to costs.

----

*/Mohandas